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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re WILLIAM B. et al., Persons Coming  
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

C.C. et al.,

Defendants and Appellants.

G041546

(Super. Ct. Nos. DP005691 &  
DP005692)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Jane L. Shade,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and Appellant C.C.

William D. Caldwell, under appointment by the Court of Appeal, for Defendant and Appellant Richard B.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Jr., Deputy County Counsel, for Plaintiff and Respondent.

Leslie A. Barry, under appointment by the Court of Appeal, for the Minor William B.

Sharon S. Rollo, under appointment by the Court of Appeal, for the Minor Noah B.

C.C. and Richard B., parents of William and Noah B., each filed petitions under Welfare and Institutions Code section 388;<sup>1</sup> both were summarily denied. They appeal, claiming each of them was entitled to a full evidentiary hearing. We find no error and affirm the orders.

## FACTS

We have seen this case before. In May 2008, we reversed the trial court's order granting the mother further reunification services at the disposition hearing on William and Noah's third dependency petition and remanded for a permanent plan selection hearing. (*In re William B.* (2008) 163 Cal.App.4th 1220.) The facts of this case through September 2007 are recited in *In re William B.*, and we repeat them here:

"C.C. and Richard B., parents of William and Noah, met in a recovery home in 1996. Both have a long history of drug and alcohol abuse. The mother was previously married to Bill S., with whom she had two daughters, Melissa and Megan. They divorced in 1994, and the girls initially remained with the mother. Subsequently, the girls were removed from the mother's custody and declared dependents of the

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

juvenile court due to her drunkenness and child endangerment. The girls were released to their father, and their dependency was terminated a year later.

“William and Noah were first removed from their parents in November 2001 when Noah was born with a positive toxicology screen for methamphetamine. They were placed with Laurie and Dan J. in February 2002. After eight months of reunification services, the boys were returned to their parents’ care under a plan of family maintenance in August 2002. The family struggled with housing and employment, and the mother continued to resist drug abuse treatment. In June 2003, the mother was arrested for drug use and possession of paraphernalia and for failure to use child safety seats. The juvenile court ordered the mother to live apart from the rest of the family and the boys were placed with the father with continued family maintenance services.

“This situation continued for almost a year. Then, in May 2004, the parents were arrested for burglary. Together in violation of the court order, the mother had been using drugs and the father had been abusing alcohol. The juvenile court sustained a supplemental petition, removed the boys from parental custody, and provided further reunification services to the parents. The boys were again placed in the home of Laurie and Dan J., who expressed an interest in adopting them if necessary. They remained there for almost 18 months, while the parents made steady progress on their case plans. In January 2006, the juvenile court placed the boys back in the parents’ custody with family maintenance services; in August 2006, the court terminated dependency proceedings.

“Six months later, the parents were arrested for being under the influence of drugs and having drugs and paraphernalia within reach of the children. The parents were incarcerated, and the children were taken in by their maternal grandparents. The maternal grandparents were unable to care for the children on a long-term basis, however, so SSA detained them in March 2007 and again placed them with Dan and Laurie J.

“The mother admitted she and the father started using drugs again sometime between November 2006 and January 2007. She stated she was aware that her drug and alcohol addiction was an illness. William told the social worker he ‘knew about “alcohol, crystal meth, meth and pot.”’ He was able to describe his father ‘doing drugs’ with a glass pipe and a lighter. ““They either use a match, a lighter or sometimes the stove.”’ Both children reported many strange people coming in and out of their home, sometimes living there for awhile. Both children also reported domestic violence between the mother and the father. They were both afraid of the father, and William’s first priority was to get his father out of his life. William stated, “I protect mom and Noah[,] that’s my job.”“

“SSA filed a new petition alleging neglect, abandonment, and sibling abuse. Social worker Valerie Butler recommended the denial of reunification services based on the parents’ failed substance abuse treatment history. Butler noted since 1994, the mother had made six attempts at sobriety by enrolling in treatment programs. The father had completed three drug treatment programs since 2001, ‘but failed to practice his 12-step[]s with[]out direct supervision[,] leading to his relapse.’

“The jurisdiction and disposition hearing was continued repeatedly until July 2007. The court heard testimony from the parents and Butler; on August 9, it sustained the petition and declared the children to be dependents of the court. The disposition phase began a few days later with William and Noah’s testimony in chambers. William, who was almost 10 at that time, testified things were good when he and Noah were returned to the parents a year ago, ‘[b]ut things just got worse and worse and worse until the day my grandparents picked me up and told me what happened.’ He described how his parents became lazier and lazier, often sleeping in and forgetting to wake him up for school and church. His mother stopped cooking and doing laundry. Groups of people came in and out of the house, sometimes fighting and yelling. The

father often got angry. Once, he pulled the mother's hair and knocked her down. Another time, the father hit a cupboard door so hard it fell off its hinges and struck William on the back and shoulders, hurting him.

"William liked living with Dan and Laurie. There were 'lots of fun animals to play with,' and he liked the country better than the city. When asked if he would want to live with his parents again, he feared it would be 'like an out-of-order candy dispenser.' He explained that living at home was 'just out of order. Nothing worked.' He wanted to stay living with Dan and Laurie for 'right now,' but he did not know whether he wanted to stay there. 'It's just that my real parents, they're my real parents; and [Dan and Laurie], I've been with them awhile, and it's not out of order like it is at my parents' house.' Dan and Laurie took him to school and church on time, made sure he had clean clothes, food and water, and made him feel comfortable and safe.

"William told the court he loved his mom and loved to see her, but he repeatedly stopped short of saying he wanted to live with her. 'I told you, I don't know because I'm just afraid that things will go out of order.' If his father were out of the picture, 'things wouldn't be as out of order. Things would be better. [But] I still don't know if my mom would do good.' The mother's counsel asked, '[W]ould you want to live with your mom if she was in a house [rather than an apartment] with a garden and arena and stars and fresh air [like where Dan and Laurie lived]?' William answered, 'I told you I do not know because I'm just afraid of things to go back to the same way.'

"Noah was five years and nine months old at the time of his testimony. He agreed that he liked living at Laurie and Dan's, he felt safe there and wanted to stay living there 'for now.' When asked if he remembered living with his parents, he stated, 'I don't want to talk about it' because it was 'scary.' He explained some of the scary things: William told him about the incident when the father pulled the mother's hair and knocked her down. William also told him his father took drugs in the glass pipe. Noah

was present when William got hit with the cupboard door; he described his father getting so angry ‘that he slapped the cupboard door . . . , and it got [William].’ The two boys and the mother went ‘into our mom’s room’ because ‘that’s where it’s most safe.’ Noah said he saw his father hit his mother on at least one occasion. ‘My dad was getting all stressed out, then he smacked [the mother].’ Noah described his dad as ‘really, really mean’ and ‘evil’ and attributed all their problems to him. He said he hated his father and did not want to see him. Noah testified he loved his mom and liked to have visits with her. He agreed he would like to live with her and William, but not with the father.

“The juvenile court found by clear and convincing evidence that both parents had a history of chronic drug use and had resisted court-ordered treatment for the problem during the three-year period preceding the filing of the petition. It then considered whether there was clear and convincing evidence that offering reunification services to the parents would be in the best interests of the children. The court pointed out that the boys were afraid of the father and there was no bonding with him. It found it was not in their best interests to offer him reunification services and ordered no visits between the father and the children.

“The court did not want to terminate services to the mother, however, because the boys had both testified they loved her and wanted to be with her. Although the court stated there was clear and convincing evidence that offering services to the mother was in the boys’ best interests, the court expressed its doubts about the mother’s chances for success. ‘She’s got many, many problems. I don’t know if she’s going to ever resolve that drug or alcohol issue. I don’t know.’ It continued, ‘I believe at this time it’s still too early to terminate services for the mother. There’s a chance by clear and convincing evidence. [¶] It’s not based on you, Ms. C[.]. It’s based on the little boys. I’m going to give them another chance. . . . I think it’s a close issue. But I think by clear and convincing evidence, I’m convinced that we’re going to give you one more chance

for those services. I don't know what's going to happen. The past history's going to show that [minors' counsel, who argued the mother would relapse again, is] probably right, but I'm not going to stop the services.' Emphasizing to the mother that this was her last chance, the court stated, 'I'm going to find the best interest for the little boys, not necessarily for you, Ms. C[.], because I think there's a chance that you're going to revert back to what happened before. I hope not, I really do. And I'm doing it for the kids' future. I'm not sacrificing their future. I just think it's based on their demeanor and how they testify and how open they were about their mother. If anything right now, would be not the right thing to do for the mother. That doesn't mean she's going to get the kids back.'

“ . . . The father filed a notice of appeal challenging the denial of reunification services and the no visitation order. The minors and SSA filed notices of appeal challenging the order granting reunification services to the mother.” (*In re William B.*, *supra*, 163 Cal.App.4th at pp. 1223-1226.)

While the appeal was pending, the children remained placed with Dan and Laurie. In February 2008, SSA reported that the mother was living in an apartment with her two daughters, then 16 and 18, and in full compliance with her case plan. She was employed full-time and had built “a strong circle of support and a sponsor to assist her in her recovery process.” The mother’s therapist, Ellen Purisch, was enthusiastic about the mother’s progress. “[T]he children’s mother[’s] commitment to change has been excellent and . . . she follows through with assignments and suggestions.” She was attending a perinatal program and drug testing twice a week with no positive results.

The mother attended four-hour monitored visits with the boys twice a month. The monitors reported the boys were excited to see her, and she “provided appropriate activities” and was “appropriate in her parenting.” But William sometimes became bored and Noah tended to throw temper tantrums. At one point, Noah yelled out,

“‘You’re not my mom, you’re a stranger.’” Laurie and Dan reported that after visits, Noah would throw tantrums and William would “isolate himself and become sarcastic and act like a ‘parent-figure.’”

At the beginning of the visit on February 21, Noah ran and jumped into his mother’s arms while William “appeared hesitant to greet his mother.” The mother was effective in dealing with Noah’s frequent tantrums, and William was patient while Noah calmed down. “The children’s mother was involved with getting to know the children’s interests and having a quality discussion about school and their interests. Both children were excited to see Laurie at the end of the visit and ran to her without saying good-bye to the mother.”

The children told Laurie and Dan they wanted to stay with them rather than returning to their mother. Noah “asked if he could still see his mom if he were to remain at the current placement. The foster parents responded that he could. . . . William then responded that he ‘wanted to stay here . . . forever, but that last time you [foster parents] tried and we got sent home.’” A few weeks later, William told the social worker essentially the same thing: He was happy with his life, he did not want to go home, he was tired of always moving, and “Dan and Laurie were nice, kind, funny, and good.”

William continued to express his desire to stay with Dan and Laurie, and he became more withdrawn from the mother during visits. In May, he created a list detailing why he did not want to live with his mother and why he wanted to stay where he was. William asked Dan to fax the list to the social worker, along with a note he had written to Dan expressing his admiration and gratitude for him. Noah alternated between excitement about being with his mother and severe tantrums and emotional decompensation.

At the end of one of the May visits, Noah told the mother, “‘[Y]ou’re not my real mother.” The mother asked why he said that, and he mumbled “‘I was drug-

induced.’” The mother demanded to know where he heard that, and he said “‘Laurie.’” The social worker met with the foster parents after the visit to discuss the incident. Laurie admitted she had told Noah that his mother was taking drugs when she had him because Noah was “at that age where he is asking several questions regarding why he is living with the caretakers instead of with his mother. The children’s foster mother felt that he should know the truth since he was asking and therefore told him.” The subject had been brought up in the children’s therapy session two days before the visit, when “[t]he therapist had inquired about [their] current placement and had asked the children if they knew why they were in a foster home instead of with their parents.” The social worker told Dan and Laurie they needed to respond to such questions in a “neutral fashion” or refer the children to her.

Both the mother and the father called the social worker to complain that SSA was allowing the foster parents to brainwash the boys against wanting to return to the mother’s care. Both asked that the mother participate in conjoint therapy with the children so she could explain why they were in foster care. The messages were so similar that the social worker felt the mother and father had been in contact with each other. When asked, however, the mother claimed she had had no contact with the father in over a year. On May 14, this court affirmed the denial of reunification services and visitation for the father, reversed the order granting reunification services to the mother, and remanded for a permanent plan selection hearing. (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1231.)

In July, the father filed a petition under section 388, seeking monitored visits with the boys. He described the programs he had completed while in custody and the sober living program in which he was currently participating. He was employed and underwent drug tests regularly, with negative results. The father acknowledged his mistakes and asserted that “it is in William and Noah[‘s] best interest to have visits with

me, especially so that they can work through whatever feelings they have toward me, and the mistakes I have made in the past. I believe it is in their best interest to know I still love them no matter what, and I am trying to be the dad they deserve.” The petition was before Commissioner Dennis Keough, together with a 12-month review hearing, on July 9; both matters were continued to August 26 by stipulation. The court checked the boxes on the father’s section 388 petition form indicating “[t]he best interest of the child may be promoted by the requested new order” and setting a hearing for August 26.

SSA submitted a report prepared for the August 26 hearing. The children’s therapist, Peter DiManno, told the social worker that William’s visits with the mother “are very disruptive for him . . . . There’s been such a long history of trauma as a result of being with his mom and dad that he’s really afraid that somebody is going to impose something that he doesn’t want. . . . [A]ny visit with mom [should] be kept to a minim[um] at this point.” The report detailed two visits in July and one in August. The monitors reported the mother continued to act appropriately towards the children. Noah was excited to see his mother but threw tantrums before and during the visits; William remain hesitant at the beginning of the visits but warmed up later.

On August 26, the trial court vacated the 12-month review hearing and set a permanent plan selection hearing in accordance with the order of this court. The father’s section 388 petition was “furthered” to September 30 pursuant to an agreement among the parties that the father would write a letter to each of the boys, which would then be reviewed by the social worker, the boys’ therapist, and their attorneys “for their appropriateness.” The therapist and social worker were to make their recommendations to the court, and the court was to determine whether and how the boys would receive the letters. On September 30, the therapist had not yet provided his recommendation, so the petition was continued to October 14; it was continued again to November 4, then December 3, then December 10.

In October, SSA submitted a report that contained the assessment from the children's therapist. Noah's memories of his father were "negative and scary." He told the therapist "[h]e'd rather not see his mom on visits." He goes only so "she won't be sad." Noah felt secure with the foster parents "and they in turn make no demands on him with regards to being happy or sad." His parental figures were Dan and Laurie, while visits with the mother were like visits with an aunt. "When talking about his mom and dad, he was tense and sat huddled in a ball. When he talked [about the foster parents], he seemed relaxed."

William described visits with the mother "as, 'who's that strange woman following me everywhere?' He's afraid to tell his mom he doesn't want to see her [because] 'She'll freak out and crash and burn.' He believes the best gift his mom could give him would be, 'It's okay to be adopted by Dan and Laurie.'" When asked what it would be like to get letters from his dad, William said, "'It's a bad weird, and odd weird. I don't want them.'" He remembered his father as "scary," "mean," and having "'grown-up temper-tantrums.'" The therapist felt the boys should have no contact with either parent and should be adopted by the foster parents. He did not give the father's letters to either boy.

On December 10, a different bench officer, Commissioner Robert L. Austin, presided. The case was continued "because the court lacked time . . . to give the time to this case that it deserves." It set "a prima facie hearing on 388 petition and also . . . a contested .26 hearing" for January 12, 2009.

Subsequently, the mother filed a section 388 petition seeking the immediate return of the boys to her under a family maintenance program or additional reunification services and an increase in visitation. She declared she had attended AA meetings and had negative drug tests several times per week since her release from jail in May 2007. She was employed and had appropriate housing. Her two daughters had been living with

her for a year. She attended weekly recovery meetings at one church, participated in a weekly women's Bible study and support group at another church, and developed a network of supportive friends through her attendance at a third church. "[A]fter approximately 13 years of cohabitating with Richard B[.], I made the decision to eliminate him from my life because he is a trigger for substance abuse as well as a source of domestic violence and a negative influence on my children. I have not spoken to him for over one year." The mother described her relationship with her boys as loving and bonded. She felt it would be in their best interests to be returned to her because she had "demonstrated that I can provide a safe, permanent, and unified, stable, family environment for them. I have remedied the situation that brought me into the dependency system . . . ."

The mother submitted a report from David E. Smith, a medical doctor with expertise in addiction. He had examined the mother in November 2008 after reviewing her history from SSA's reports. Smith opined, "It is clear that one of the major reasons for her past treatment failure is that her assessment was inadequate and she was not assigned to the gender-specific treatment which is most appropriate and effective for the problems she has." Smith believed the mother's treatment at Kathy's House, which she entered in May 2007, was the type of treatment she needed. "There she learned specific relapse prevention techniques, gained peer support and received individualized psychotherapy to deal with her addiction, recovery and residual [post-traumatic stress syndrome] and co-occurring disorders. Following this program, she entered transitional housing and is now living clean and sober in an active recovery program." Smith stated that the mother "has internalized the principles of recovery and is very aware of the factors that contribute to relapse. She describes being aware of 'red flags' that will serve as a warning to prevent her from entering into new dysfunctional relationships such as

those with her husband, Richard.” He recommended the mother be granted full custody of her children.

On January 12, the court continued the permanent plan selection hearing to March at the request of SSA due to notice problems. Both section 388 petitions were continued to January 16 because the social worker was unavailable. SSA asked: “[I]s it the court’s intention to set the [388’s] for both the prima facie and substantive hearing on the 388 should the court grant prima facie, or are we just addressing prima facie that day . . . ?” The court agreed that they should “do as much as we can that day assuming that the social worker is available.” On January 16, the 388 was continued again, with the father’s counsel acknowledging that they should “handle the prima facie first” before the permanent plan selection hearing.

The court addressed both the mother’s and the father’s section 388 petitions, as well as a section 388 petition filed by William, on January 28, 2009. The court found there was not a showing the mother’s request would promote the children’s best interest. “There is substantial information before the court given the long history of this case to show that these children need permanency.”

The father argued he was “not requesting just visits with his children.” He wanted to apologize to them in a therapeutic setting “for whatever time period that [the] therapist thinks is necessary for him to apologize, take responsibility, and then release his children in a sense that there’s some closure and that they can go on with their lives however that turns out to be.” The court found the father had not made a prima facie showing to justify a hearing. It felt the father was expressing “his need to work through his feelings and concerns, and the focus is not on . . . the two boys. [¶] . . . [¶] There’s no statement from a therapist or anything similar to that that would show that this is in the child[ren]’s best interest other than the father’s opinion that it may be so.”

## DISCUSSION

### *The Mother's Section 388 Petition*

The mother contends she was entitled to an evidentiary hearing on her petition because she made a prima facie case of changed circumstances and best interests of the boys. We disagree.

Section 388 allows a parent to petition the juvenile court to change or modify a previous order “upon grounds of change of circumstance or new evidence.” (§ 388, subd. (a).) The court must hold a hearing on the petition only “[i]f it appears that the best interests of the child may be promoted by the proposed change of order. . . .” (§ 388, subd. (d).) Thus, the petition must state a prima facie case of both changed circumstances and best interests of the child. “The prima facie requirement is not met unless the facts alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.)

Although the petition should be liberally construed in favor of granting a hearing (*In re Mary G.* (2007) 151 Cal.App.4th 184, 205), the juvenile court need not put blinders on when determining whether the required showing has been made. Rather, the court can consider the “entire factual and procedural history of the case” when evaluating the significance and strength of the allegations in the petition. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189; *In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450-1451.) Allegations of changing, rather than changed, circumstances are not sufficient to warrant a hearing. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 49.) We review the juvenile court’s decision to deny a hearing for an abuse of discretion. (*In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1445.)

This case presents a difficult situation. The mother has made herculean efforts to overcome a deep-seated, long-standing drug addiction. At the time of the

hearing, she had remained drug free for 21 months, a significant achievement. She had stabilized her housing and employment, successfully participated in rehabilitative programs, and demonstrated her commitment to the boys by the consistency and quality of her visits. If the outcome of this case turned on the fine line between “changed” and “changing” circumstances in the context of chronic drug abuse, we would be hard pressed to find the mother had failed to cross that line.

But it does not. The focus of this case has shifted from reunification to the boys’ interest in security and stability. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) Although the mother has arguably done all she could, there is no evidence that resuming reunification efforts would be in the best interests of William and Noah. Even if we could be sure that the mother will not relapse or resume her relationship with the father (which we cannot), the history of the case has left an indelible mark on these children. While their mother was rehabilitating herself, they have found stability and security with Dan and Laurie. Their therapist reported they no longer view the mother as their parental figure; rather, they are seeking permission to break their bond with her and belong to their foster family. The mother’s biological connection to the boys is insufficient to establish a *prima facie* case that return to her care is in their best interests. (*In re Justice P.*, *supra*, 123 Cal.App.4th at p. 192.)

#### *The Father’s Section 388 Petition*

The father argues he was entitled to an evidentiary hearing on his section 388 petition because the court indicated it would hold a hearing on his petition form. Citing *In re Lesly G.* (2008) 162 Cal.App.4th 904, he contends the court’s failure to hold a hearing was a violation of substantive and procedural due process. The circumstances here compel us to hold otherwise.

In *Lesly G.*, the mother filed a section 388 petition on the date of the permanent plan selection hearing, seeking reinstatement of reunification services. The

court continued the permanent plan selection hearing to September 11 and indicated it needed to review the petition to decide whether it would be set for hearing. The court checked the boxes on the petition form indicating “the best interest of the child may be promoted by the requested new order” and setting a hearing on September 11. The court also checked the box indicating “[t]he judge will not hold a hearing.” Subsequently, the clerk of the court sent the mother a notice stating her petition had been “ordered set for hearing” on September 11. (*In re Lesly G.*, *supra*, 162 Cal.App.4th at pp. 909-910.)

The parties appeared on September 11 prepared to address permanent plan selection and the section 388 petition. At the outset, however, the court stated the petition had been denied because it did not promote the best interest of the child. On the mother’s appeal, the court found “the juvenile court violated procedural due process when it failed to hold a hearing on her section 388 petition after” finding a *prima facie* showing had been made. (*In re Lesly G.*, *supra*, 162 Cal.App.4th at pp. 912-913.)

Here, however, the conduct of the parties and the court indicated the repeatedly continued hearing was for the purpose of determining whether the petition stated a *prima facie* case for relief under section 388, notwithstanding the inconsistent checked statements on the petition form. In December, Commissioner Austin stated the pending hearing was “a *prima facie* hearing”; no one contradicted him. When the hearing was continued twice in January 2009, both SSA and the father referred to the pending hearing as *prima facie*. And when the matter was finally heard on January 28, the parties’ argument was about whether the father’s petition presented a *prima facie* case for relief.

As a general rule, a party is precluded from urging on appeal any point not raised in the trial court. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 117.) Any other rule would ““““permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby permitting the proceedings to go to a conclusion which he

may acquiesce in, if favorable, and which he may avoid, if not.’” [Citations.]’ [Citation.]” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 411.) Not only did the father fail to object to a prima facie argument, he actively participated in it.

Furthermore, the father makes no serious argument that he would have prevailed had a full evidentiary hearing been held. “‘Due process is a flexible concept which depends upon the circumstances and a balancing of various factors. [Citation.] The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court.’ [Citations.]” (*Sheri T. v. Superior Court* (2008) 166 Cal.App.4th 334, 341.) The petition contained no evidence that the father’s request would be in the best interests of the boys. The only evidence was to the contrary. A full hearing would have served no purpose.

#### DISPOSITION

The orders are affirmed.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

MOORE, J.